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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/692,249	10/19/2000	Richard Gareth Warner	4-30476B/C1C1	6806

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EXAMINER
TURNER, SHARON L

ART UNIT	PAPER NUMBER
1647	3

DATE MAILED: 03/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/692,249	Warner
Examiner	**Art Unit**
Sharon L. Turner, Ph.D.	1647

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 8-27-01

2a) ☐ This action is **FINAL.** 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-22 is/are pending in the applica

4a) Of the above, claim(s) _____ is/are withdrawn from considera

5) ☐ Claim(s) _____ is/are allowed.

6) ☐ Claim(s) _____ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☒ Claims 1-22 are subject to restriction and/or election requirem

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☐ Notice of References Cited (PTO-892)

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

19) ☐ Notice of Informal Patent Application (PTO-152)

20) ☐ Other:

Election/Restriction

1.. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-10, 17-19 and 22 in part, drawn to a conjugate, pharmaceutical composition, and kit , classified in class 530, subclass 300.

II. Claim 11 and 22 in part, drawn to a method of preventing rejection, classified in class 514, subclass 2.

III. Claim 12 and 22 in part, drawn to a method of treating disease, classified in class 514, subclass 12.

IV. Claims 13-14 and 22 in part, drawn to a method for treating blood, classified in class 514, subclass 2.

V. Claims 15, 19 and 22 in part, drawn to an apparatus and kit, classified in class 514, subclass 2.

VI. Claims 16, 19 and 22 in part, drawn to blood, classified in class 514, subclass 2.

VII. Claims 20 and 22 in part, drawn to a method of medicament manufacture for preventing rejection, classified in class 514, subclass 2.

VIII. Claims 21-22 in part, drawn to a method of medicament manufacture for treating disease, classified in class 514, subclass 2.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. However, the inventions are distinct because the agent of Group I as claimed can be used in materially different methods, such

as in a method of raising antibodies or a method of detection, also the method of Group II can be practiced without the agent of Group I, such as by using antibodies.

Having shown that these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and recognized divergent subject matter as defined by MPEP § 808.02, the Examiner has prima facie shown a serious burden of search (see MPEP § 803). Therefore, an initial requirement of restriction for examination purposes as indicated is proper.

Additional Restriction Requirement

3. The claims of Groups I-II are drawn to a multitude of distinct therapeutic agents, as recited in claims 2-12, and 14-24. This constitutes a recitation of an implied, mis-joined Markush group that contains multiple, independent and distinct inventions. Each of the therapeutic agents are independent and distinct because no common structural or functional properties are shared. Accordingly, these claims are subject to restriction under 35 U.S.C. 121. It is noted that the peptides, nucleic acids, peptidomimetics and antibodies of the claims are presumed therapeutic agents although the claims lack proper antecedent basis for those designated elements of the claims.

Upon election of one of Groups I-II, Applicant is additionally required to elect a single therapeutic agent from those therapeutic agents designated in claims 2-12 and 14-24. This requirement is not to be considered as a requirement of an election of species, since each of the compounds recited in alternative from are not proper species.

3. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143). In order to be fully responsive applicants must elect a single therapeutic agent as designated in claims 2-12 and 14-24.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

5. Any inquiry of a general nature or relating to the status of this general application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Papers relating to this application may be submitted to Technology Center 1600, Group 1640 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). Should applicant wish to FAX a response, the current FAX number for Group 1600 is (703) 308-4242.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon L. Turner, Ph.D. whose telephone number is (703) 308-0056. The examiner can normally be reached on Monday-Friday from 8:00 AM to 4:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached at (703) 308-4623.

Sharon L. Turner, Ph.D.
March 25, 2002

Gary L. Kunz
GARY L. KUNZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600